

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)		Docket Number (Optional) 066511.0111
First Named Inventor: Rob Van Der Giessen	Art Unit: 1655	
Application Number: 10/533,135	Examiner: McCormick, Melenie Lee	
Filed: November 18, 2005		
Title: Pharmaceutical Compositions and Uses Comprising Mucuna Pruriens Seed Powder and Extracts Thereof in the Treatment of Neurological Diseases		
Attention: Office of Petitions Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450		
NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.		
The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.		
APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION. NOTE: A grantable petition requires the following items: (1) Petition fee. (2) Reply and/or issue fee. (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and (4) Adequate showing of the cause of unavoidable delay.		
1. Petition fee		
<input checked="" type="checkbox"/> Small entity – fee \$ 255.00 (37 CFR 1.17(l)). Applicant claims small entity status. See 37 CFR 1.27.		
<input type="checkbox"/> Other than small entity – fee \$ _____ (37 CFR 1.17(l)).		
2. Reply and/or fee		
A The reply and/or fee to the above-noted Office action in the form of <u>Response to Office Action</u> (identify the type of reply):		
<input type="checkbox"/> has been filed previously on _____.		
<input checked="" type="checkbox"/> is enclosed herewith.		
B The issue fee of \$ _____		
<input type="checkbox"/> has been filed previously on _____.		
<input type="checkbox"/> is enclosed herewith.		

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature

January 23, 2008

Date

Michelle M. LeCointe

Typed or printed name

46,861

Registration Number, if applicable

Baker Botts L.L.P.

Address

512.322.2580

98 San Jacinto Blvd., Suite 1500, Austin, TX 78701

Telephone Number

Address

Enclosure Fee Payment Reply Terminal Disclaimer Form Additional sheets containing statements establishing unavoidable delay**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this correspondence is being:

deposited with the United States Patent & Trademark Office's electronic filing system (EFS) on the date shown below addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

January 23, 2008

Date

Signature

Crystle Garbade

Typed or printed name of person signing certificate

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.



Signature

Michelle M. LeCointe

Typed or printed name

January 23, 2008

Date

46,861

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

Additional sheets attached containing statements establishing unavoidable delay.

(Please attach additional sheets if additional space is needed.)

Petition for Revival of an Application for Patent Abandoned Unavoidably
U.S. Patent Application No. 10/533,135
Attorney Docket No. 066511.0111

In view of the statement set forth below, Applicant maintains that the delay in responding to the Office Action in the above-captioned patent application, of which Applicant was notified by e-mail by the U.S. Patent and Trademark Office ("PTO") on May 8, 2007, was unavoidable. On November 15, 2006, the PTO announced the establishment of the Private PAIR Outgoing Correspondence Notification Pilot Program. Under this Pilot Program, the PTO would notify voluntary participants of PTO Correspondence addressed to their Customer Number address via e-mail. Participants then would download such PTO Correspondence. According to the Private PAIR Participants Guidelines (December 16, 2006 - June 15, 2007), "[p]articipants are urged to view or download their Office action within 7 calendar days of receipt of email notification. Failing to do so will trigger the USPTO to send participants courtesy postcards as a reminder. The mailing of courtesy postcards will not reset the date of commencement for the shortened statutory period of response." (copy enclosed; emphasis added)

Applicant's representative is a Private PAIR Customer, was a participant in the PTO's e-Filing Forum, and was an EFS-Web Beta Participant. Applicant's representative opted into the Pilot Program on or about December 11, 2006. On December 14, 2006, Applicant's representative participated in the Private PAIR e-Office Action Pilot Program. Applicant's representative's docketing staff participated in The PAIR Feedback Questionnaire Results Event on March 27, 2007. The staff member in charge of Applicant's representative's docketing staff has more than eight (8) years of experience with Applicant's representative as a patent secretary and a docketing staff member. Applicant's representative and it's docketing staff are experienced and trained in PTO's electronic filing and monitoring procedures and each member of Applicant's representative's docketing staff has been trained formally in-house within Applicant's representative's firm on docketing procedures.

On May 8, 2007, the PTO notified Applicant's representative of three (3) pieces of PTO Correspondence via e-mail. (Redacted copy enclosed.) Applicant's representative's docketing staff downloaded two (2) of the three (3) pieces of PTO Correspondence, but, due to an error on the part of a docketing staff member in the performance of this clerical function, the docketing staff failed to download the Office Action for the above-captioned patent application. According to the Transaction History from PAIR (copy enclosed), the PTO did not mail a postcard reminder

Petition for Revival of an Application for Patent Abandoned Unavoidably
U.S. Patent Application No. 10/533,135
Attorney Docket No. 066511.0111

to Applicant's representative. When such postcard reminders are received, Applicant's representatives docketing staff download or confirm that they have downloaded the PTO Correspondence and make and initial an annotation on the postcard reminder confirming the action taken. Applicant's representative does not have a postcard reminder relating to the Office Action for the above-captioned patent application or any indication that Applicant's representative received such a postcard reminder. Because the docketing staff failed to download the Office Action in response to the initial notification, and, in the absence of a postcard reminder, the docketing staff did not enter the deadlines for responding to the Office Action in Applicant's representative's computer docketing system (copy enclosed) or on a back-up docketing calendar. According to the Transaction History from PAIR, the PTO notified Applicant's representative of the Notice of Abandonment on November 23, 2007 (copy enclosed).

After Applicant's representative downloaded the Notice of Abandonment on November 23, 2007, it immediately located and downloaded the missed Office Action. Applicant's representative analyzed the Office Action and the cited references, and reported the Office Action on January 4, 2008. Applicant's representative received instructions to reply to the Office Action and to file a petition for revival of the application. Thus, despite the Christmas holidays and the complexity of the Office Action, Applicant's representative has prepared and filed a petition for revival of the application and a reply to the Office Action within two (2) months of receipt of the Notice of Abandonment. Therefore, Applicant's representative acted diligently upon receiving the Notice of Abandonment, and Applicant maintains that the entire delay in the filing of the reply from the due date of the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(a), was unavoidable.

In accordance with MPEP 711.03(c)(II)(C)(2),

[a] delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

(A) the error was the cause of the delay at issue;

Petition for Revival of an Application for Patent Abandoned Unavoidably
U.S. Patent Application No. 10/533,135
Attorney Docket No. 066511.0111

(B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and

(C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

Applicant maintains that the clerical error in failing to download the PTO Correspondence in response to the e-mail notification caused the delay at issue and that there was a business routine in place for performing the clerical function, including the review of postcard reminders, that could reasonably be relied upon to avoid such clerical errors. Further, although this was a Pilot Program and had been in existence for only six (6) months at the time of the error, Applicant maintains that Applicant's representative's docketing staff members were sufficiently trained and experienced to with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

In accordance with MPEP 711.03(c)(II), Applicant is enclosing a reply to the outstanding Office Action, and Applicant's representative hereby authorizes the PTO to charge the petition fee set forth in 37 C.F.R. § 1.17(l) and any additional fees required by the submission of this petition and the reply, including, but not limited to, any fees for the extension of time to respond, to the undersigned's **Deposit Account No. 50-2148**. In addition, Applicant maintains that the foregoing statement demonstrates that the entire delay in the filing of the reply from the due date of the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(a), was unavoidable. Further, because Applicant filed the above-captioned utility patent application on November 18, 2005, i.e., after June 8, 1995, Applicant is not required to submit a terminal disclaimer under 37 C.F.R. § 1.137(d). Therefore, Applicant respectfully requests that the PTO grant this petition for revival of the above-captioned patent application and that the Examiner reconsider the application in view of the enclosed reply.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

Private PAIR
Pilot Participant Guidelines
December 16, 2006 – June 15, 2007

Participant Guidelines:

The Guidelines express the understanding between Private PAIR Pilot Participants and the USPTO concerning the activities related to the testing of Electronic Outgoing Correspondence Notification henceforth referred to as e-Office Action. Participants who do not abide by these Guidelines may be removed from the Pilot program.

- Participants understand that the e-Office Action functionality used during the Pilot Program is experimental.
- Participants understand that e-Office Action is a Customer Number-based program. Only applications associated with the Customer Numbers that they have used to opt-in to e-Office Action will be able to take advantage of the new process.
- Participants are urged to opt-in and register up to three e-mail addresses for receipt of their patent application's outgoing correspondence email notification.
- Participants understand that the USPTO is not responsible for email notifications being sent to an incorrect address if the participants fail to provide the correct email address.
- Participants are aware that they do have the ability to opt-in or opt-out of the e-Office Action at anytime, but are encouraged to maintain their opt-in status during the pilot phase.
- Participants understand that once they have opted-in to receive e-Office Action given by the USPTO, they will not receive any paper Office actions for as long as they maintain the opt-in status, with the exception of Formalities Letters. Participants will continue to receive paper Formalities Letters in the mail along with email notifications during the pilot.
- Participants are urged to view or download their Office action within 7 calendar days of the receipt of email notification. Failing to do so will trigger the USPTO to send participants courtesy postcards as a reminder. The mailing of courtesy postcards will not reset the date of commencement for the shortened statutory period of response.
- Participants agree to receive training prior to and/or during the pilot.
- Participants agree to fill out and submit the "Issue Reporting Form" via email, as provided by the USPTO Private PAIR project team, to document errors, problems, or questions during the pilot period.



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- Participants agree to fill out and submit the “Pilot Program Feedback Questionnaire” form, as provided by the USPTO Private PAIR project team, to document the overall user experience during the pilot period.

Thank you for your interest in participating in this exciting activity, and for helping the USPTO achieve their goal of continued commitment to the patent filing community and government eCommerce initiatives.

Garbade, Crystle

From: PAIR_eOfficeAction@USPTO.GOV
Sent: Tuesday, May 08, 2007 4:47 AM
To: USPTO Correspondence; Davis, Oneka; darlene_hoskins31@msn.com
Cc: PAIR_eOfficeAction@USPTO.GOV
Subject: Private PAIR Correspondence Notification for Customer Number 24735

May 08, 2007 05:46:42 AM

Dear PAIR Customer:

BAKER BOTTS LLP/C/O INTELLECTUAL PROPERTY DEPARTMENT
THE WARNER, SUITE 1300 1299 PENNSYLVANIA AVE, NW
WASHINGTON, DC 20004-2400
UNITED STATES

The following USPTO patent application(s) associated with your Customer Number, 24735, have new outgoing correspondence. This correspondence is now available for viewing in Private PAIR.

The official date of notification of the outgoing correspondence will be indicated on the form PTOL-90 accompanying the correspondence.

Application Attorney Docket No.

10533135 066511.0111

To view your correspondence online or update your email addresses, please visit us anytime at <https://sportal.uspto.gov/secure/myportal/privatepair>.

If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov or call 1-866-217-9197 during the following hours:

Monday - Friday 6:00 a.m. to 12:00 a.m. Eastern Standard Time (EST)

Thank you for prompt attention to this notice,

UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM

10/533,135	Pharmaceutical compositions and uses comprising mucuna pruriens seed powder and extracts thereof in the treatment of neurological diseases	01-22-2008::11:24:25
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Transaction History

Date	Transaction Description
11-23-2007	Email Notification
11-23-2007	Mail Abandonment for Failure to Respond to Office Action
11-18-2007	Abandonment for Failure to Respond to Office Action
08-24-2007	Grant Request for Retroactive License
05-08-2007	Electronic Review
05-08-2007	Email Notification
05-05-2007	Email Notification
05-08-2007	Mail Non-Final Rejection
04-30-2007	Non-Final Rejection
04-30-2007	Date Forwarded to Examiner
03-05-2007	Response to Election / Restriction Filed
05-02-2007	Mail of Withdrawal of Informal Amendment Notice
04-30-2007	Withdrawal of Informal Amendment Notice
04-25-2007	Electronic Review
04-24-2007	Email Notification
04-20-2007	Mail Notice of Informal or Non-Responsive Amendment
04-18-2007	Date Forwarded to Examiner
03-05-2007	Informal or Non-Responsive Amendment after Examiner Action
03-05-2007	Response to Election / Restriction Filed
03-05-2007	Request for Extension of Time - Granted
11-01-2006	Request for Retroactive License
09-05-2006	Mail Restriction Requirement
08-30-2006	Requirement for Restriction / Election
06-06-2006	IFW TSS Processing by Tech Center Complete
06-06-2006	Case Docketed to Examiner in GAU
04-29-2005	Request for Foreign Priority (Priority Papers May Be Included)
04-29-2005	Preliminary Amendment
04-17-2006	Cleared by OIPE CSR
11-18-2005	371 Completion Date
03-10-2006	Application Dispatched from OIPE
03-10-2006	Notice of DO/EO Acceptance Mailed
11-18-2005	Additional Application Filing Fees
11-18-2005	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic
09-19-2005	Notice of DO/EO Missing Requirements Mailed
04-29-2005	Initial Exam Team nn

[Close Window](#)

Country Application

Tuesday, January 22, 2008

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Client Matter Number: 066511.0111

Country: US

SubCase:

Client: Phytrix AG

United States of America

Client Reference No: F2226 US

Case Type: PCT

Resp.Office: DC

Application Status: Published

Status Date:

Application Number: 10/533135

Filing Date: 18-Nov-2005

Publication Number: 2006-0165822-A1

Publication Date: 27-Jul-2006

Patent Number:

Issue Date:

Parent/PCT Number: PCT/EP03/10975

Parent/PCT Date : 02-Oct-2003

Parent Issue Number:

Parent Issue Date :

Tax Schedule: LE

Expiration Date:

Confirmation #: 2204

Patent Term Adjustment: 0

Agent:

Agent Reference #:

PTO Customer Number:

Priority Number: 02024475.2

Historical Family No.:

New Family Number: 066511.0111.PCT.CON

Matter:

Claims: 31

Annuity Client?: Yes

Tax Start Date:

Country Application

Tuesday, January 22, 2008

Page: 2

List Of Actions

Action(s) Due	Due Date	Action Taken
Rejection	19-Sep-2005	Due Date
Filing Receipt Rec'd	29-Sep-2005	Reminder
2 Month Due Date	19-Nov-2005	Due Date
Response Due	19-Nov-2005	Due Date
1st Extension	19-Dec-2005	Reminder
2nd Extension	19-Jan-2006	Reminder
3rd Extension	19-Feb-2006	Reminder
2 Weeks To Final Date	06-Mar-2006	Due Date
6 Month Final Date	19-Mar-2006	Final
Filing Receipt Follow Up Date	22-Mar-2006	Due Date
1 Month Action Mailed	05-Sep-2006	Due Date
claims 31-61 are pending/claims 31-61 are subject to restriction and/or election requirement		
client informed M. LeCointe on 1/12/07 that they would not be able to make the 2/5/07 deadline to file a response to the office action.		
Petition	16-Oct-2006	Due Date
petition under 35 u.s.c. (section) 184 for retroactive grant of foreign filing license and for expedited issuance under 37 c.f.r. (section) 5.14(a) was filed 10/16/06		
Application Status Check	29-Oct-2006	Due Date
4th Extension	05-Feb-2007	Reminder
claims 31-61 are pending/claims 31-61 are subject to restriction and/or election requirement		
client informed M. LeCointe on 1/12/07 that they would not be able to make the 2/5/07 deadline to file a response to the office action.		
5th Extension	05-Mar-2007	Final
claims 31-61 are pending/claims 31-61 are subject to restriction and/or election requirement		
client informed M. LeCointe on 1/12/07 that they would not be able to make the 2/5/07 deadline to file a response to the office action.		
Application Sta Follow Up Date	05-Mar-2007	Due Date
Petition Follow-up/rec'd	16-Apr-2007	Due Date
petition under 35 u.s.c. (section) 184 for retroactive grant of foreign filing license and for expedited issuance under 37 c.f.r. (section) 5.14(a) was filed 10/16/06		

Country Application

Tuesday, January 22, 2008

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Notice/Incomplete Reply Rec'd	20-Apr-2007	Due Date	20-Apr-2007
Sent copy of notice and client file to M. Lecointe 4/25/07			

On 5/7/07 received a notice from the PTO "letter withdrawing a Notice of Non-Compliant Amendment" The Notice of Non-Compliant Amendment mailed 4/20/07 was sent in error, and is hereby withdrawn. The application is being forwarded to the examiner for appropriate action.

Notice/Incomplete Reply Final	20-May-2007	Final	02-May-2007
Sent copy of notice and client file to M. Lecointe 4/25/07			

On 5/7/07 received a notice from the PTO "letter withdrawing a Notice of Non-Compliant Amendment" The Notice of Non-Compliant Amendment mailed 4/20/07 was sent in error, and is hereby withdrawn. The application is being forwarded to the examiner for appropriate action.

Application Status Check	05-Aug-2007	Due Date	26-Nov-2007
claims 31-61 are pending/claims 31-61 are subject to restriction and/or election requirement			

client informed M. LeCointe on 1/12/07 that they would not be able to make the 2/5/07 deadline to file a response to the office action.

Review for Generic Claim	05-Sep-2007	Reminder	05-Mar-2007
claims 31-61 are pending/claims 31-61 are subject to restriction and/or election requirement			

client informed M. LeCointe on 1/12/07 that they would not be able to make the 2/5/07 deadline to file a response to the office action.

Notice of Abandonment	23-Nov-2007	Due Date	23-Nov-2007
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Petition to Revive Reminder	23-Dec-2007	Reminder	
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Petition to Revive Due	23-Jan-2008	Final	
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Created By: DHOSKINS

User ID: SRICHARI

Date Created: 21-Apr-2005

Last Update: 26-Nov-2007